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No. 1055

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

ANTHONY HASWELL,

Appellant,

vs.

PAUL POWELL, Secretary of State, Illinois,

Appellee.

On Appeal From The Supreme Court Of The State Of Illinois.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

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I.

DENIAL OF THE RIGHT TO DRIVE IS A SUBSTANTIAL INFRINGEMENT OF THE RIGHT TO TRAVEL AND CAN BE IMPOSED ONLY IN ACCORDANCE WITH DUE PROCESS SAFEGUARDS.

(Answer to Appellee's Motion, Part I, pp. 2-3.)

Appellee asserts that the right to drive is not absolute and, on the basis of that assertion, attempts to distinguish

Aptheker v. *Secretary of State,* 378 U.S. 500 (1964) and *Kent* v. *Dulles,* 357 U.S. 116 (1958), cited in appellant's jurisdictional statement. Appellant has no quarrel with the proposition that the state can properly limit or revoke the right to drive for a variety of reasons, including unsafe driving habits. Appellant has never asserted, as the Secretary suggests, that the right to drive is "absolute", nor did this Court hold in *Aptheker* or *Kent* that the right to a passport is "absolute." Appellant's position, simply stated, is that denial of the right to drive is a substantial infringement of the right to travel which, as this Court held in *Aptheker,* must be accorded the safeguards of due process of law. That appellant was denied those basic due process safeguards is demonstrated in parts III, IV and V of the jurisdictional statement.

II.

REVOCATION OR SUSPENSION OF DRIVING RIGHTS IS PUNISHMENT OR ITS EQUIVALENT WHICH CAN BE IMPOSED ONLY IN ACCORDANCE WITH DUE PROCESS SAFEGUARDS.

(Answer to Appellee's Motion, Part II, pp. 3-5.)

Appellee asserts that suspension of the right to drive under Section 6-206 of the Illinois Motor Vehicle Code (Ill. Rev. Stats., 1965, ch. 95½, § 6-206) is a civil rather than a penal proceeding. By choosing to utilize labels rather than analyze the operation and effect of the suspension provisions of the statute, appellee begs the question at issue. It is the sanction authorized, not the label given the proceeding, which is controlling. *Specht* v. *Patterson,* 386 U.S. 605, 608 (1967).

Appellee admits (p. 4) that the assessment of a fine for a traffic offense is "penal" in nature. Appellee ignores, however, the self-evident truth that most persons would

rather suffer a fine than lose their licenses or have them suspended.

The severity of the sanction, when viewed in its operation, necessitates the conclusion that punishment *or its equivalent* is involved, so as to require due process safeguards.

III.

THE STATUTORY CRITERIA ARE UNCONSTITUTIONALLY VAGUE.

(Answer to Appellee's Motion, Part III, pp. 5-7.)

Other than by pure declamation, appellee's motion utterly fails to answer the principal charge that the statutory language of § 6-206 of the Illinois Motor Vehicle Law is void for vagueness.

The cases cited by appellee (pp. 5-6) concern the constitutionality of statutes regulating "habitual" or "persistent" offenses. Appellant does not attack this aspect of the Illinois statute. Rather, it is the *basic standard* which the Secretary is required to apply in determining whether a particular act will be deemed to be an "offense" within the statute which is here attacked.

Contrary to appellee's implication, the Illinois statute does not provide for an automatic suspension upon three convictions of certain specified and clearly-defined offenses. Rather, it speaks in terms of offenses which "indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways." Such a vague and wholly subjective test clearly fails to meet the standards of definiteness which are constitutionally required of a statute which seeks to limit constitutional rights or impose the equivalent of criminal punishment. Appellee's authorities relating to "habitual offender" statutes are thus inapposite.

Appellee suggests that the Illinois statute as applied is aided by an administrative determination of 84 separate violations which show "disrespect" for traffic laws and "disregard" for the safety of others (pp. 6-7). This statement is not only *de hors* the record, it is directly contradicted by evidence which does appear in the record.

As appellant indicated in his jurisdictional statement (p. 13, n. 1), the "point system" relating to 84 defined offenses only guides the Secretary of State in determining the *length of a suspension,* but plays *no part* whatsoever in the *initial decision* of whether to suspend or not to suspend. During appellant Haswell's hearing, the prosecutor for the Secretary of State made the following statement:

> "There is *no rule* promulgated by the Secretary of State with regard to the *decisional approach* taken by the Department on the entry of an Order of Suspension where three moving violations which have been committed within a twelve-month period have been brought to the attention of the Secretary of State by receipt of the appropriate conviction reports.
>
> "The only rule and regulation which has been promulgated by the Secretary of State relates to the evaluation of a point system which relates to the *severity* or the *length of the action taken* by the Secretary of State. . . . The only rule and regulation which has been promulgated by the Secretary of State relates to the assignment of point values to various convictions *for the purpose of determining the length or severity of suspension.* There is *no rule or regulation* relating to *how many violations* have to occur before there is a suspension." (Emphasis added.)

As the statute indicates on its face, the determination of whether an act will be deemed to "indicate a disrespect for traffic laws and a disregard for the safety of other per-

sons on the highways . . .'' is left to the unbridled discretion of the Secretary.*

The constitutionality of a statute affecting substantial rights, which is based upon such vague and meaningless verbiage and which affects hundreds of thousands of Illinois drivers every year, raises a substantial question which should be considered by this Court.

IV.

THE DEPRIVATION OF THE RIGHT TO DRIVE BY AN ADMINISTRATIVE AGENCY, ACTING BOTH AS PROSECUTOR AND JUDGE WITHOUT A VIABLE PROVISION FOR JUDICIAL REVIEW OF THE ADMINISTRATIVE DETERMINATION, CONSTITUTES A DENIAL OF DUE PROCESS.

(Answer to Appellee's Motion, Parts IV and V, pp. 7-8.)

Appellee's argument with regard to the nature of the administrative hearings, as well as the review of those hear-

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* The opportunity for a wholly arbitrary exercise of this discretion which is afforded by the vague language of the statute has not passed unnoticed. An investigation of the Secretary's practices in this area was recently conducted by the Chicago Sun Times and the Better Government Association. The Sun Times reported (January 21, 1968, p. 16):

> "A survey of the system by the Sun-Times and the Better Government Assn. has shown that the current system—a blend of human judgment and computer control—often results in questionable, even dangerous rulings.
>
> • • •
>
> ". . . the number of 'discretionary revocations'—persons ruled off the roads, by hearings officers after questionable cases are reviewed—has been dropping under Powell's tenure.
>
> • • •
>
> "The investigation uncovered numerous cases where the exercise of discretion in favor of drivers was questionable. . . ."

ings, rests on pure declamation. Appellee's sole citation, *Marcello* v. *Bonds*, 349 U.S. 302 (1955), was distinguished in appellant's jurisdictional statement. Appellant therefore relies upon the points and arguments in support thereof, presented at Parts IV and V of its jurisdictional statement (pp. 15-21).

CONCLUSION

This case presents substantial questions regarding a statute which is couched in unconstitutionally vague standards and which sanctions the limitation of important constitutional liberties and the imposition of punishment by an agency which acts in a dual capacity as judge and prosecutor, without a viable means for obtaining a judicial determination. It is a statute, moreover, which has the broadest impact upon the citizenry, affecting literally hundreds of thousands of Illinois citizens yearly. Appellee's motion, rather than presenting grounds for dismissal, underscores the importance of resolving the substantial issues raised by this case.

Respectfully submitted,

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